No. 4 Orig.
Brief of Hamlin, Drennan & Springer for Respondent (mo
Filed Oct. 23, 1902.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE STATE OF MISSOURI,
COMPLAINANT,
v.
THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
RESPONDENTS.

IN EQUITY
No. 4.
Original.

BRIEF OF RESPONDENTS IN SUPPORT OF MOTION TO DISMISS.

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Attorney General of Illinois.
JAMES TODD,
JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Solicitors for Respondents.

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BRIEF OF RESPONDENTS IN SUPPORT OF MOTION TO DISMISS.

I.

The failure or refusal of the plaintiff to prosecute his suit within a reasonable time will authorize its termination by the court in which it is brought, upon the motion of the defendant and against the will of the plaintiff.

6 Encyc. of P. and P., page 904.

II.

The rule applies to every kind of civil proceedings, whether in law or in equity.

A Bill in Chancery may be dismissed upon the unexplained default of plaintiff in proceeding further with the cause within a reasonable time.

Id. page 905, and note 3, citing numerous authorities in Illinois, Kentucky, Massachusetts, Michigan, Missouri, Mississippi, New Jersey, North Carolina, and Virginia. Also numerous English cases.

III.

Where plaintiff failed after issues joined to move for commission to examine witnesses, defendant was entitled to a dismissal.

Id. page 906, and note 4, citing Carden *v.* Manning, 1 Keen, 380.

IV.

At common law a plaintiff may be nonsuited for want of prosecution.

Id. page 907, and note 4, citing numerous authorities in Arkansas, California, Illinois, Kentucky, New York, and in England.

V.

The complainant may be dismissed for failure of the plaintiff to proceed with the cause after issue joined.

Id. page 910, and note 1, citing Winchell *v.* Martin, 14 Abb. Pr. N. S. (N. Y. Supreme Court) 47; McCarmick *v.* Miller, 19 Minn. 443.

VI.

"Three months and no more shall be allowed for taking of testimony after the cause is at issue, unless the court or judge thereof shall, upon special cause shown by either

party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing."

Rule 69 of "Rules of Practice for the Equity Courts of the United States."

2 Desty's Federal Procedure, page 1183.

The three months allowed is for taking testimony of both plaintiff and defendant.

Ingle *v.* Jones, 9 Wall. 486.

VII.

The bill of complaint in the case at bar was filed in this Court January 22, 1900, nearly two years ago, and the issues were joined May 27, 1901.

Since that time an entire term of this Court has intervened, and no effort has been made by the complainant to further prosecute said cause or to sustain its said bill of complaint by testimony of any kind.

VIII.

Counsel for respondents respectfully insist, in view of the facts of record and the law applicable thereto, that their motion to dismiss for want of prosecution should be allowed, and that respondents may go hence with their reasonable costs in this behalf expended.

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